

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT STARKS,

Plaintiff,

-vs-

No. CIV 98-0630 JC/WWD ACE

RANDOLPH “DUKE” WHITE, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Plaintiff-Counterdefendant Robert Starks’ Motion to Reopen Summary Judgment Deadline, filed October 30, 2000 (*Doc. 169*). The Court finds that the motion is not well taken and will be denied.

THIS MATTER also came on for consideration of Plaintiff-Counterdefendant Robert Starks’ Motion to Modify Pretrial Order, filed October 31, 2000 (*Doc. 170*). The Court finds that the motion is well taken and will be granted.

I. Motion to Reopen Summary Judgment Deadline

In his first motion, Mr. Starks argues that new evidence and additional guidance from the New Mexico State Court of Appeals warrant a re-opening of the summary judgment deadline to allow him to file a renewed summary judgment motion. Mr. Starks “new” evidence purports to address concerns raised by the Court in its Memorandum Opinion and Order dated October 28, 1999 (*Doc. 158*). The evidence, an affidavit of former PNM employee David Bedford and the Stipulated Judgment of former Defendant BLM, is dated April 4th, 2000 and March 1, 2000. Similarly, Mr.

Starks argues that the New Mexico State Court of Appeals opinion in *Sitterly v. Matthews*, 2000-NMCA-037, Vol. 39, no. 19 N.M. SBB on May 11, 2000 will clarify issues previously raised by this Court. Defendant White opposes the motion. *See* Objection to Plaintiff's Motions, filed November 9, 2000 (*Doc. 173*).

This case was filed over two years ago. The non-jury trial in this case is currently set on a trailing calendar for November 27, 2000. However, Plaintiff did not file this motion until October 30, 2000. Given the delay by Plaintiff in filing this motion, the proximity of trial, and the need for resolution of this case, the Court finds that the outstanding claims in this case would be better and more thoroughly addressed at that time. Therefore, the Court will deny Plaintiff's Motion to Reopen the Summary Judgment Deadline.

II. Motion to Modify Pretrial Order

The initial pretrial order in this case was submitted to the Court in October 1999. However, the Pretrial Order was not filed until October 13, 2000 (*Doc. 167*). In the interim, three of the four defendants settled with Plaintiff. In addition, the Court reduced the scope of remaining Defendant White's countersuit, dismissing all but three of his claims. *See* Memorandum Opinion and Order, filed October 28, 1999 (*Doc. 158*). Accordingly, Plaintiff-Counterdefendant Starks requests that the Pretrial Order be amended to reflect these changes. *See* Motion to Modify Pretrial Order, filed October 31, 2000 (*Doc. 170*). Mr. Starks also requests that he be allowed to add David Bedford to his witness list. *See id.*

Defendant White "generally wants all relevant facts to come before the Court." Objection to Plaintiff's Motions, ¶ 6 (*Doc. 173*). He also states that "Mr. Bedford's presumed testimony appears

to go to the issue of ‘implied easement.’” *Id.* However, Mr. White indicates that if Plaintiff Counterdefendant Starks is permitted to amend the witness list to include Mr. Bedford, Mr. White would seek to introduce rebuttal testimony and witnesses. *See id.* at ¶12.

The parties remaining in this case have been cognizant of the issues before the Court and the possibility of additional witnesses since late 1999. *See* Motion to Modify Pretrial Order at ¶5 (*Doc. 170*). Accordingly, no prejudice would occur to either side if the amendments are allowed. Therefore, Plaintiffs Motion to Modify the Pretrial Order will be granted. The parties will have until Monday November 20, 2000 to jointly submit a new Pretrial Order to the Court.

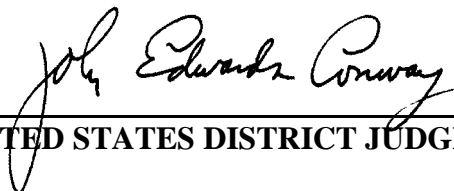
Wherefore,

IT IS ORDERED that Plaintiff-Counterdefendant Robert Starks’ Motion to Reopen Summary Judgment Deadline, filed October 30, 2000 (*Doc. 169*) is **denied**.

IT IS ORDERED that Plaintiff-Counterdefendant Robert Starks’ Motion to Modify Pretrial Order, filed October 31, 2000 (*Doc. 170*) is **granted**.

IT IS FURTHER ORDERED that the parties will have until Monday November 20, 2000 to jointly submit a new Pretrial Order to the Court.

DATED this 14th day of November, 2000.


UNITED STATES DISTRICT JUDGE

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